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IN THE

Supreme Court of the United States

October Term, 1960.

No. .....

JOSEPH ALEX COTA,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles.

Joseph Alex Cota, Petitioner, prays that a Writ of Certiorari issue to review the judgment of the Appellate Department of the Superior Court, State of California in and for the County of Los Angeles, entered in the above-entitled case on August 12, 1960.

Citations to Opinions Below.

The transcript of the proceedings in the Municipal Court in and for the City and County of Los Angeles is appended. The judgment of the Appellate Department of the Superior Court, is appended hereto. This case was not reported. Appellate briefs attached.

Jurisdiction.

The judgment of the Los Angeles Municipal Court was entered on April 8, 1960. This judgment was affirmed by the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

How Federal Question Is Presented.

The rulings of the Municipal and Appellate Departments could not have been reasonably anticipated from prior decisions. All Case Law and Opinions in California, including that cited by the prosecution, concerning the vagrancy statute, clearly show vagrancy is a status, mode of life, or calling rather than merely the doing of an act with the only possible exception of lewd conduct. However, in lewd conduct cases the law as to vagrancy status is most confused. (*People v. West*, C. R. A. 2002; *People v. Illington*, 103 Cal. App. 2d. Supp. 911; *People v. Craig*, 152 Cal. 42, 47, 91 Pac. 997; 23 Cal. L. Rev. 515, and citations therein; 39 Cal. L. Rev. 579; 6 C. J. 401, note 47; *Ex parte Hayden*, 12 Cal. App. 145, 147, 106 Pac. 839.)

The case of *Al Castueras* for a Writ of Habeas Corpus, 130 Cal. App. 15, dealt directly with the statute involved here; namely, California Penal Code 647.7. The complaint in the *Castueras* case charged as much, if not more, than did that alleged against petitioner, Joseph Alex Cota. However, the California Court in the *Castueras* case did not even consider the complaint to state a public offense. Since the decision in the case at hand was arrived at in a totally unanticipated and unprecedented manner, it becomes exceedingly clear that Cali-

fornia Penal Code Section 647.7 cannot be uniformly applied and is, therefore, in violation of the United States Constitution and Due Process under the Fourteenth Amendment.

The United States Supreme Court has jurisdiction where there arises a Federal question as the result of an unanticipated decision. *Saunders vs Shaw*, 244 U. S. 317, 320; *Ohio v. Akron Park District*, 281 U. S. 74, 79; *Missouri v. Gehner*, 281 U. S. 313, 320; *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673, 677-678; *Great Northern Ry. v. Sunburst Oil Co.*, 287 U. S. 358, 366, 367; *Herndon v. Georgia*, 295 U. S. 441.

California Penal Code Section 647.7 is clearly invalid under the United States Constitution. In view of the rulings of the Municipal Court of Los Angeles, it was necessary to point out to the Appellate Department, that California Penal Code Section 647.7 is unconstitutional because it is vague, indefinite, incapable of uniform application and hence, contrary to Due Process of Law. (*Yu Cong Eng v. Trinidad*, 70 L. Ed. 322, 271 U. S. 500, 46 S. Ct. 619; *Connally v. General Construction Co.*, 269 U. S. 385, *United States v. Reese*, 92 U. S. 214, 23 L. Ed. 563.) Appellant, Petitioner herein, sought further to point out that if on its face a criminal statute is repugnant to the Due Process Clause, specifications of details of the offense intended to be charged will not serve to validate it, it being the statute and not the accusation under it that prescribes the rule to govern conduct and warns against transgression (*Lanzetta v. New Jersey*, 306 U. S. 451, 59 S. Ct. 618.) Further, it was demonstrated that the California Penal Code Section 647.7 is violative of Due Process for lack of specificity and failure in giving decent advance no-

Where a Federal Right has been denied as the result of a finding of fact which it is contended, there was no evidence whatever to support and the evidence is in the record, the resulting question of law is open for decision; and, where a conclusion of law as to a Federal Right and finding of fact are so intermingled as to cause it to be essentially necessary for the purpose of passing upon the Federal Question to analyze and dissect the facts, to the extent necessary to do so, the power exists as a necessary incident to a decision upon the claim of denial of the Federal Right. (*Creswill v. Knights of Pythias*, 225 U. S. 246; *Kansas City S. Ry. Co. v. Albers Comm. Co.*, 223 U. S. 573, 591; *Cedar Rapids Gas Co. v. Cedar Rapids*, 223 U. S. 655, 668; *State of Washington ex rel. Oregon R.R. and Navigation Co. v. Fairchild, et al., State R.R. Commissioners*, 224 U. S. 510, 32 S. Ct. 535, 56 L. Ed. 863; *Davis v. Wechsler*, 263 U. S. 22, 24.)

Questions Presented.

1. Whether or not the California Penal Code, Section 647.7, is valid under the Fourteenth Amendment to the United States Constitution.

2. Whether petitioner was denied due process of law by virtue of not having compulsory process for obtaining witnesses for his defense.

3. Whether verdict and judgment are supported by

Statute Involved.

The statutory provision involved is California Penal Code Section 647.7 which states:

> "Every person who lodges in any barn, shed, shop, outhouse, vessel or place other than such as is kept for lodging purposes, without permission of the owner or party entitled to the possession thereof; is a vagrant."

Statement.

On February 25, 1960, the petitioner entered the campus of the University of California at Los Angeles at approximately 11:00 A.M. The petitioner had in his possession a number of leaflets describing a dispute he had with the University. The leaflets set out both a request for an investigation of the matter and a call for an amendment to the then newly proposed University Master Plan so as to allow a citizen the right of appeal to the judiciary in similar matters of dispute.

The petitioner had tried all manner of means to get his grievance investigated. All avenues of appeal were closed by the argument that no one had jurisdiction to intervene in the matter. This argument was presented not only by the University officials but by state courts, members of the state legislature and the governor's office. Hence, the petitioner sought the assistance of his fellow citizens to get his grievance heard. His presence on campus was not to lodge as a vagrant but rather to arouse public opinion to the fact that here was a matter calling for investigation and remedy.

main objective and makes the act the status
of life rather than the converse. This is dang
freedom of speech, the right to petition and to
ual freedom in general because the doing of an
brand an individual a member of a degraded cl
though that act be innocently done in the purs
worthy objective not even remotely related to va

To illustrate, in the case of *Tucker v. Tex*
U. S. 517, 66 S. Ct. 274, 90 L. Ed. 273, it w
that the constitutional guaranty of freedom of
precludes the application to a minister
undertook, contrary to the order of the manag
village constructed to house workers in national
activities on lands of the United States, to val
doors of residents thereof, presenting his religio
to those willing to listen and distributing religio
ture to those willing to receive it, of a state statu
ing it an offense willfully to refuse to leave
after having been notified to do so by the o
possessor thereof.

Also, in the case of *Marsh v. State of Alaba*
U. S. 501, it was held the constitutional guar
freedom of the press and of religion preclude
conviction against one who undertook to distrib
gious literature on a street of a company-owne
contrary to the wishes of the town's manageme
state statute making it a crime to enter or re
the premises of another after having been warn
to do so.

Compare the present case wherein petitioner
took to arouse public opinion, make himself a
with petitions to be signed, and distribute lea
as to get his grievance with the University inve

Because everyone disclaimed jurisdiction, petitioner's case was never heard upon its merits. Yet, while trying to bring the matter to public attention with the further hope of obtaining corrective legislation to prevent a similar situation from ever arising again, the petitioner is branded as a vagrant by the same people who refused to investigate his case. To be so criminally branded is beyond the scope and meaning of the law. Clearly, the rulings in this case are more in violation of constitutional freedoms than *Tucker v. Alabama* and *Marsh v. Alabama*.

In *State v. Stone*, 96 Minn. 482; 105 N. W. 187, the court found part of an ordinance attempting to punish a person as a vagrant who "is found trespassing on private premises without giving good account to the court for his or her conduct" was in excess of the council's power. Such power, ruled the court, must be confined within reasonable bounds and limited to the generally accepted meaning and scope of the law relating to the subject. So it is in the present case that California Penal Code Section 647.7 is unreasonable and not limited to the general meaning and scope of the law relating to the subject to such extent as to be in violation of the Fourteenth Amendment to the United States Constitution.

Conclusion.

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

THOMAS G. NEUSOM,

Counsel for Petitioner.

RESPONDENT'S BRIEF IN OPPOSITION

FILE COPY

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 505

JOSEPH ALEX COTA,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Granting of Writ of Certiorari.

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IN THE

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No. .....

JOSEPH ALEX COTA,

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vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Granting of Writ of Certiorari.

Statement.

Petitioner was charged by the People of the State of California in a verified complaint with violation of Subdivision 7 of Section 647 of the Penal Code of the State of California, (Appendix) a misdemeanor. Such complaint alleged in the words of the statute that he:

> ". . . did wilfully and unlawfully lodge in a barn, shed, shop, outhouse, vessel, and place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the permission thereof."

closes that at approximately midnight of the night in question an officer found petitioner lying in the vestibule of the library building at the University of California at Los Angeles, covered with a blanket. [Rep. Tr. p. 13, line 22, to p. 19, line 4.] That he was taken to the police station [Rep. Tr. p. 19, line 9] and then released. [Rep. Tr. p. 19, line 15.] At 2:30 A.M. petitioner was again found back under his blankets at the same location and was arrested. [Rep. Tr. p. 20, lines 3-17.]

Petitioner was convicted of the charge, and was fined fifty ($50) dollars. He appealed to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, and such court affirmed the judgment of conviction without opinion.

Petitioner now seeks a Writ of Certiorari in this court, apparently on the grounds:

1. That the California court's interpretation of the California statute in question resulted in a denial of due process of law under the 14th Amendment to the Constitution of the United States.

2. That the statute in question is vague and indefinite and thus repugnant to the due process clause in the 14th Amendment to the Constitution of the United States.

3. That the exclusion of the testimony of certain witnesses as to petitioner's motives constituted a denial of due process of law under the 14th Amendment to the Constitution of the United States.

I.

The California Court's Interpretation of Subsection 7 of Section 647 of the Penal Code of California.

Petitioner apparently contends that the decision of the Appellate Department of the Superior Court conflicts with prior decisions of California courts holding that vagrancy constitutes a status rather than the doing of an act. In the trial of the action, petitioner advanced the theory of status [Rep. Tr. p. 35, line 17, to p. 36, line 6] and the trial court adopted such theory by giving petitioner's proposed instruction on the subject. [Rep. Tr. p. 81, line 9.] In affirming on appeal without opinion, the Appellate Department of the Superior Court apparently supported the trial court in this regard. Further, the decision of the Appellate Department manifestly determined that the conduct of petitioner as related in the Reporter's Transcript of the trial constituted a violation of the statute in question.

It is the province of the courts of a particular state to determine what its laws are, and to determine whether particular acts on the part of an alleged offender, constitute a crime under such laws.

Appleyard v. Massachusetts, 203 U. S. 222, 51 L. Ed. 161;

Howard v. Fleming, 191 U. S. 126, 48 L. Ed. 121;

Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28, 92 L. Ed. 455;

International Union, etc. v. O'Brien, 339 U. S.

II.

The Language of Subsection 7 of Section 647 of the Penal Code of the State of California Is Not Vague or Indefinite.

Subsection 7 of Section 647 of the Penal Code of the State of California provides:

> "7. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; . . .
>
> Is a vagrant, and is punishable by a fine of not exceeding five hundred ($500) dollars, or by imprisonment in the County Jail not exceeding six months, or by both such fine and imprisonment."

Petitioner contends that the above section is clearly invalid under the United States Constitution because it is vague, indefinite and incapable of uniform application. However, he does not disclose in what particular.

In determining whether a statute is invalid on the ground of vagueness, the applicable standard is not one of wholly consistent academic definition of abstract terms; it is rather, the practical criterion of *fair notice* to those to whom the statute is directed. The particular context is all important.

> *American Communications Ass'n v. Douds*, 339 U. S. 382; 94 L. Ed. 925.

The plain words of a statute must be given the meaning naturally attributable to them.

> *United States v. Resnick*, 299 U. S. 207, 81 L. Ed. 127.

Furthermore, the rule of strict construction of criminal statutes does not require that the narrowest technical meaning to be given to the words employed, in disregard of their context, and in frustration of the obvious legislative interest.

United States v. Corbett, 215 U. S. 233, 54 L. Ed. 172;

United States v. Brandell, 348 U. S. 503, 99 L. Ed. 2d 594;

United States v. Unger, 352 U. S. 407, 1 L. Ed. 2d 430.

The statute in question employs words of long usage and well known meanings. Its terms should enable a person honestly seeking to comply with the law to pursue an acceptable course of conduct without undue difficulty.

III.

The Exclusion of the Testimony of Certain Witnesses as to Petitioner's Motives Did Not Constitute a Denial of Due Process of Law Under the Fourteenth Amendment to the Constitution of the United States.

It was not error to exclude testimony of certain witnesses as to petitioner's purported purpose or motive for being on the campus of the University of California at Los Angeles on the night in question. It would have been no defense to a violation of the statute that petitioner was engaged in the furtherance of a cause in which he believed.

It is a California rule of law that sometimes an act is expressly prohibited by statute in which case the intentional doing of the act regardless of a good motive or

ignorance of its criminal character, constitutes the offense denounced by law. Instances illustrating this principle may be found in statutes enacted for the protection of public morals, public health, and the public peace and safety.

People v. Gory, 28 Cal. 2d 450, 170 P. 2d 433;

People v. Reznick, 75 Cal. App. 2d 832, 171 P. 2d 952.

Petitioner attempts to create the impression that his prosecution and conviction resulted from his attempt to gain an investigation of his grievances with the University. Such is not supported by the record. He was convicted of *lodging* in the vestibule of the Library building of the University because he was found in such location at 2:30 A.M., and for the second time that night, rolled up in his blankets.

IV.

The Supreme Court of the United States Should Not Take Jurisdiction to Review an Order Where No Opinion Was Delivered by the Highest State Court.

The record and the Petition for Writ of Certiorari discloses that no opinion was delivered by the Appellate Department of the Superior Court of Los Angeles County.

In *Stembridge v. State of Georgia*, 343 U. S. 541, 96 L. Ed. 1130, it was held that where the highest court of the state delivers no opinion and that it appears the judgment might have rested upon a non federal ground, this court will not take jurisdiction to review the judgment.

The statute herein involved is not vague or indefinite and does not violate the due process clause of the 14th Amendment to the Constitution of the United States. The California court's determination of what acts constitute a violation of state law and on the relevancy and materiality of the motive for such acts is clearly a judgment without opinion resting on non-federal grounds.

Conclusion.

The Petition for Writ of Certiorari does not disclose that there has been a violation of petitioner's rights under the Federal Constitution, nor does it show that the highest court of the State of California has decided a federal question in conflict with applicable decisions of this court, or decided a federal question of substance not theretofore determined by this court.

Respondent prays that the petition be denied.

Respectfully submitted.

ROGER ARNEBERGH,
City Attorney.

PHILIP E. GREY,
Assistant City Attorney.

WM. E. DORAN,
Deputy City Attorney.

Attorneys for Respondent.

APPENDIX.

Stats. 1955, c. 109, p. 638, sec. 2 (Subdivision 7 of Section 647 of the California Penal Code)

> 7. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; . . .

Is a vagrant, and is punishable by a fine of not exceeding five hundred ($500) dollars or by imprisonment in the County Jail not exceeding six months or by both such fine and imprisonment.

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OCTOBER TERM, 1960

No. 505

JOSEPH ALEX COTA,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S REPLY BRIEF.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

JOSEPH ALEX COTA,

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vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S REPLY BRIEF.

I.

Petitioner Was Convicted of Vagrancy Not "Lodging."

From a reading of Respondent's Brief, the gravity of the constitutional issue becomes even more evident.

On page six of the brief in opposition, the Respondent states quite clearly, "He was convicted of *lodging* in the vestibule . . ." etc. (Emphasis added.) This shows quite clearly that instead of being convicted for having the status of a vagrant, the Defendant was convicted on the basis of the alleged act of "lodging" rather than vagrancy, the crime supposedly set up under California Penal Code, Section 647.7.

As is amply shown in the petition (page 2, para. 2; Arguments and Citations thereto), all case law in Cali-

is accepted, any citizen may be arrested for lodging merely for taking refuge in a doorway of a building while temporarily escaping a rainstorm. Certainly, if prior decisions can be so easily ignored, Section 647.7 is invalid under the United States Constitution because it is vague, indefinite and incapable of uniform application.

Though the Trial Court used less than three lines of instruction to the Jury dealing with status, the Respondent attempts to argue this follows precedent. What is not made clear is that the Trial Court did not give an explanation of the meaning of status to the Jury; the testimony and evidence was restricted by the Court to the act and the Jury was left to ponder the meanings of lodge or dwell and whether it was permanent or temporary.

II.

Conflict of Vagrancy Law With Principle of Adverse Possession.

If the present ruling were allowed to stand, it would come into direct conflict with a principle of California and common law. Section 647.7 conflicts with a method an individual may obtain title to land by way of adverse possession. This illustration is set out to show how grossly untenable is the position of Respondent.

The case of *Scott v. Worden*, 111 Cal. App. 587, 296 Pac. 95, sets out the five elements needed to establish adverse possession.

4. Continuous and uninterrupted occupancy, accompanied by acts and a claim adverse to real owner for statutory period of five years;

5. Payment of all taxes against land for five years.

Obviously, one must lodge on the land of another without permission of the owner. Although this is settled California law, the Respondent would have any adverse possessor, whose intention or purpose is to settle upon or obtain legal title to land, convicted of "lodging" and branded as a vagrant. One has only to look at the instructions of the court in the trial transcript to see that there is no clear-cut definition of lodge or dwell, or whether it means permanent or temporary. Hence, an adverse possessor, who is given a right to claim legal title under the law, would be a vagrant according to the logic of Respondent, without the right to subpoena witnesses who could verify his purpose, intention, or status under that very same law which grants him a right.

III.

Section 647.7 Is Vague and Unconstitutional Because It Sets No Standard for Number of Acts Making One a Vagrant.

Section 647.7 is also vague and indefinite and incapable of uniform application from another aspect. It establishes no standard or criterion for the number or numbers of acts which would make one a vagrant or give him such status. Except for lewd acts, even then the law as